

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	
<b>W.R. GRACE &amp; CO., et al.,</b>	<b>§</b>	<b>Jointly Administered</b>
	<b>§</b>	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	<b>§</b>	
	<b>§</b>	

**FEE AUDITOR'S FINAL REPORT REGARDING  
EIGHTEENTH INTERIM QUARTERLY FEE APPLICATION OF  
CONWAY, DEL GENIO, GRIES & CO., LLC**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Eighteenth Interim Quarterly Fee Application of Conway, Del Genio, Gries & Co., LLC (the “Application”).

**BACKGROUND**

1. Conway, Del Genio, Gries & Co., LLC (“CDG”), was retained as financial advisor to the Official Committee of Asbestos Property Damage Claimants. In the Application, CDG seeks approval of fees totaling \$150,000.00 and costs totaling \$2,522.24 for its services from July 1, 2005, through September 30, 2005.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application. We reviewed the Application for compliance with 11 U.S.C. §330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed

Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals.

## **DISCUSSION**

3. We note that CDG recorded a total of 155 hours for the three months covering this application period (the "Compensation Period"). CDG was paid a flat fee of \$150,000.00 during the Compensation Period, which calculates to an effective hourly rate of \$967.74 per hour.

4. We note that in our final report regarding CDG for the 12<sup>th</sup> Interim Period, we recommended a reduction of \$220,338.94 of the \$300,000.00 in fees that Conway sought due to what we believed to be excessive charges for the time of work provided. This recommended reduction was upheld by the Court. In its application for the 13<sup>th</sup> Interim Period, CDG voluntarily reduced its fees from \$100,000.00 per month to \$50,000.00 per month. CDG has billed the Official Committee of Asbestos Property Damage Claimants at that rate for the 13<sup>th</sup> through 17<sup>th</sup> Interim Periods. The chart below shows CDG's effective hourly rate for each interim . The rates have been rounded to the nearest dollar.

1 <sup>st</sup> - 3 <sup>rd</sup> Interims /April 27, 2001 - December 31, 2001	Effective hourly rate \$ 538
4 <sup>th</sup> Interim / January 1, 2002 - March 31, 2002	Effective hourly rate \$ 612
5 <sup>th</sup> - 7 <sup>th</sup> Interims / April 1, 2002 - December 31, 2002	Effective hourly rate \$ 181
8 <sup>th</sup> Interim / January 1, 2003 - March 31, 2003	Effective hourly rate \$ 719 <sup>1</sup>
9 <sup>th</sup> Interim / April 1, 2003 - June 30, 2003	Effective hourly rate \$ 815
10 <sup>th</sup> Interim / July 1, 2003 - September 30, 2003	Effective hourly rate \$1,754
11 <sup>th</sup> Interim / October 1, 2003 - December 31, 2003	Effective hourly rate \$6,224
12 <sup>th</sup> Interim / January 1, 2004 - March 31, 2004	Effective hourly rate \$2,551
13 <sup>th</sup> Interim / April 1, 2004 - June 30, 2004	Effective hourly rate \$ 845

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<sup>1</sup>We note that of the 240.8 hours billed to the bankruptcy case matter (as opposed to the fraudulent conveyance action matter), 188.7 hours were billed to the project category "Fee Applications, Applicant". If we exclude such time, the effective hourly rate for the eighth interim period would rise to \$3,323.49.

14 <sup>th</sup>	Interim / July 1, 2004 - September 30, 2004	Effective hourly rate \$ 536
15 <sup>th</sup>	Interim / October 1, 2004 - December 31, 2004	Effective hourly rate \$ 935
16 <sup>th</sup>	Interim / January 1, 2005 - March 31, 2005	Effective hourly rate \$1,028
17 <sup>th</sup>	Interim / April 1, 2005 - June 30, 2005	Effective hourly rate \$1,899
18 <sup>th</sup>	Interim / July 1, 2005 - September 30, 2005	Effective hourly rate \$ 968

5. We note that in the July 19, 2004, USG hearing, the Court stated, "...I can't very well fight a \$400 an hour hourly rate, but if it's going to be something like every 3 months it's going up to \$1000 folks, and I'm not approving it... In no period will somebody be awarded \$1000 an hour... Mr. Smith, I'm simply going to charge you with bringing this to my attention. If at any point in time this rate gets to be this high for any period of time for any professional, I want to know about it." See Transcript of 7/19/04 USG hearing pages 10, 11 & 12. In an effort to better anticipate the level of CDG's work for the Asbestos Property Damage Claimants Committee, we contacted Bilzin, lead counsel for the Committee, and asked the firm for more information regarding CDG's participation.

Bilzin responded as follows:

You have asked for an explanation of whether there is an expectation that CDG's hours will increase. We do believe that CDG's hours will increase in the future to an amount far in excess of those in the Seventeenth Interim Application. First, CDG will be substantially involved in analyzing the Debtors' performance at year end and meeting with the Debtors during the beginning of the year to discuss the results and projections going forward. Second, CDG will continue to provide the PD Committee with its analysis and advice related to the Debtors' proposed acquisitions and non-ordinary course transactions. Third, CDG will likely be involved in the financial aspects of the estimation of asbestos claims that are currently underway. We would also note that given the size and complexity of the Debtors' businesses, there are a myriad of other issues that arise from time to time for which the PD Committee seeks CDG's advice.

We appreciate the response.

6. We note that for the upcoming 19<sup>th</sup> Interim, CDG billed \$150,000.00 and lists 246 hours. This computes to an effective hourly rate of \$609.75. With the greater number of hours billed

in the 18<sup>th</sup> and 19<sup>th</sup> Interim periods, CDG's effective hourly rate appears to be trending downward.

7. We note that while we are cognizant of the different billing structure surrounding a fixed- fee agreement and the variability of calculating an hourly rate within that structure, we nonetheless feel compelled to bring to the Court's attention any fixed-fee billings which appear excessive. In that light, we will continue to monitor CDG's effective hourly rate and report that to the Court.

8. We have no issues with CDG's application.

### **CONCLUSION**

9. Thus we recommend approval of fees totaling \$150,000.00 and costs totaling \$2,522.24 for CDG's services from July 1, 2005, through September 30, 2005.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By:



Warren H. Smith

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### **FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 3<sup>rd</sup> day of March, 2006.



Warren H. Smith

**SERVICE LIST**

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